



San Diego City Attorney CASEY GWINN

NEWS RELEASE

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RESPONSE TO LAWSUIT, COUNCIL DISTRICT 4 VACANCY Statement by Les Girard, Assistant City Attorney

Following the untimely death of Council Member Charles Lewis the Mayor immediately sought counsel from the City Attorney, City Manager, City Clerk and the County Registrar of Voters regarding the obligations of the City Council under the City Charter and the appropriate course of conduct in the calling of a special election to fill any vacancy. The actions of the City Officials in this matter, and the resultant timing of meetings and any special election, fully comport with state and local law.

Council Member Lewis passed away on Sunday, August 8. The next regularly scheduled meeting of the City Council was to take place on August 9-10. However, the provisions of the California Brown Act, a state law superior to the provisions of the City Charter and Municipal Code, required public notice of any matter appearing on the agenda for that meeting to be posted no later than 2 p.m. the previous Friday, August 6. Therefore, pursuant to state law the matter of the vacancy in District 4 could not be regularly noticed for the City Council meeting of August 9-10.

The calling of a special meeting is a discretionary matter with the Mayor, and while the City Charter and Municipal Code permit the calling of a special meeting under these circumstances one is not required. A memorandum from five Council Members may, however, also cause the calling of a special meeting. In the absence of a special meeting, the next regularly scheduled meeting of the City Council is September 7, and it is expected that the matter of the vacancy in District 4 will be taken up at that time as required by the City Charter. Even if the matter of the vacancy had been taken up at the meeting of August 9-10, or was taken up during the current regularly scheduled legislative recess, the special election could not have been consolidated with the general election on November 2. Pursuant to the provisions of the state Elections Code, a minimum time (88 days) is specified between the request for consolidation and the election, and only 85 days remained between August 9 and November 2. A special municipal election held the same day as the general election (but not with a consolidated ballot) presents significant practical and logistical issues for the County Registrar of Voters, and the Registrar accordingly recommended against simultaneous elections.

Consideration of the unfortunate vacancy in District 4 on September 7 fully comports with the requirements of the City Charter and Municipal Code while complying with the strict mandates of state law regarding the noticing of meetings and the calling of special elections.

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